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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/042,835 | 01/08/2002 | Dawn L.M. Krysiak | 5579 | 6548 |

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[REDACTED] EXAMINER

TRAN LIEN, THUY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1761 | 4 |

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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|---|--------------------------------------|---|---|
| Office Action Summary | Application No. 10/042,835 | Applicant(s) Krysiak et al. | |
| | Examiner Lien Tran | Art Unit 1761 |  |
| <i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i> | | | |
| Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. | | | |
| - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). | | | |
| Status | | | |
| 1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Jan. 8, 2002</u> | | | |
| 2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final. | | | |
| 3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213. | | | |
| Disposition of Claims | | | |
| 4) <input checked="" type="checkbox"/> Claim(s) <u>1-50</u> is/are pending in the application. | | | |
| 4a) Of the above, claim(s) _____ is/are withdrawn from consideration. | | | |
| 5) <input type="checkbox"/> Claim(s) _____ is/are allowed. | | | |
| 6) <input checked="" type="checkbox"/> Claim(s) <u>1-50</u> is/are rejected. | | | |
| 7) <input type="checkbox"/> Claim(s) _____ is/are objected to. | | | |
| 8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement. | | | |
| Application Papers | | | |
| 9) <input type="checkbox"/> The specification is objected to by the Examiner. | | | |
| 10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). | | | |
| 11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. | | | |
| 12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. | | | |
| Priority under 35 U.S.C. §§ 119 and 120 | | | |
| 13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). | | | |
| *See the attached detailed Office action for a list of the certified copies not received. | | | |
| 14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received. | | | |
| 15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. | | | |
| Attachment(s) | | | |
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ | |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) | |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | | 6) <input type="checkbox"/> Other: _____ | |

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1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. Claims 1,11,18,19,21,24 and 50 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 5, “ said pieces” do not have antecedent basis because the claim has not set forth a plurality of pieces.

In claim 11: Line 3, the term “ thin” is vague and indefinite because it is a relative term; what would be considered as thin. Also, on line 1, it is suggested to change “ piece” to --- pieces--- to be consistent with the terminology on lines 9-10.

In claim 18, the phrase “ the ready-to-eat cereal pieces” is unclear because the claims have not set forth “ ready-to-eat cereal pieces”; thus, it is not clear what the phrase is referring to.

Claim 19 is vague and indefinite. Claim 19 refers back to the method of claim 5; however, claim 5 is not a method claim and does not contain step A. On line 2, the term “ thin” has the same problem as claim 11.

In claim 21: Line 2, the term “ thin” has the same problem as claim 11. Also, the claim is incomplete because it does not have any limitation following the word “ and” on line 2.

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Claim 24 is vague and indefinite. On line 2, it is not clear what the first liquid or binder base coating is applied to; is it applied to the layers or the final laminated product.

Claim 50 is vague and indefinite. There is no step E in the previous claims.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al.

Brown et al disclose multilayered R-T-E breakfast cereal pieces and a method of making them. The method comprises the steps of providing separate segregated sheets of cooked cereal dough, compressively layering the separate sheets to form a laminated sheet in which the layers are bonded together, forming individual pieces from the laminated sheet and drying the pieces.

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The separate sheets can be of a different composition, flavor and/or color. The cooked cereal dough has a moisture content of about 18-35% prior to formation of the laminated sheet and at least three separate sheets are used to make the laminated sheet. The laminated sheet has a moisture content ranging from 18-26% and temperature of about 60-76.6 degree C. The sheets have a thickness of .025-.15 inch. The laminated products have a cumulative thickness of about .050-.5 in. The bulk density of the pieces range from about .25 to .7 g/cc. The laminated sheets can be fabricated with additional non-cereal intermediate layers and/or materials. The intermediate layer can be sweetened fruit puree layer. The products can be fabricated with a variety of particulate materials that can be applied to the intermediate dough layer prior to formation of the laminate. The finished products include both regular and presweetened and or coated products. The moisture content of the final product is 2-4%. (See columns 2-9).

Brown et al do not disclose the number of layers as claimed, the piece count of 6-20/10g, the layer fabricated from flakes, layer comprising whole grain dough, thickness of the laminated sheet as claimed, the temperature of the laminated sheet as claimed, ratio of laminated pieces to coating, the coating of ground sucrose and cinnamon, the compress thickness of 10-25mm and 35-65% of the initial thickness and the pressure as claimed.

Brown et al disclose the laminated pieces are made from at least three separate sheets; this disclosure clearly suggests that more than three sheets can be used to make the laminated pieces. It would have been obvious to one skilled in the art to use any number of sheet depending on the texture wanted. More sheets give a thicker product which in turn gives a different texture from

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less sheets which gives a thinner product. It would also have been obvious to make the pieces of any size so that the piece count per gram of product can vary; changing the size would have been an obvious matter of choice as it is known in the art that cereal products come in many different sizes. It would also have been obvious to change the thickness of the sheets and subsequently the laminated pieces depending on the hardness wanted. Thicker pieces give a harder texture than thinner ones. It would have been obvious to use a temperature at which it is easiest to work the dough and a pressure which would give the most optimum compression; applicant has not shown any criticality or unexpected result over the claimed temperature and pressure. The pressure can also vary depending on the equipment used. It would have been obvious to use any varying ratios of coating to the pieces depending on the thickness of coating desired and this depends on the taste and flavor wanted. It would have been obvious to use powder sucrose or powder cinnamon as the coating material if such taste is wanted. This is well known in the art as there are many cereal products commercially available that have sugar coating or cinnamon coating. It would have been obvious to use flakes to form the layers when desiring to obtain a different texture and appearance because flakes are texturally and visually different from continuous sheets. It would also have been to use whole grain dough if such a taste is wanted because Brown et al disclose the separate layers can be different in composition, flavor and/or color. Example 1 discloses multilayered cereal made from three different formulas.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Duffy discloses multicolored R-T-E cereal product.

Kamper et al disclose ultrasonic method for bonding food layers.

Leibfred et al disclose reduced fat shredded wafers.

Leibfred disclose a process for the production of multi-textured shredded cereal biscuits.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

April 17, 2003

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700